

**REMARKS**

Applicants submit this Reply in response to the Final Office Action mailed December 1, 2009. Claims 14-22 are pending in this application, of which claim 14 is independent. By this Reply, Applicants propose amending claims 14 and 16. No new matter would be added.

In the Office Action, the Examiner rejected claims 14-22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention; and rejected claims 14-22 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,922,100 ("Cain").

By this Reply, Applicants have amended independent claim 14 to recite:

A burner for a vapour deposition process, comprising: a central nozzle for ejecting a glass precursor material, said central nozzle being defined by at least a first and a second wall, said central nozzle having a concave shaped cross-section in a radial plane; and an annular nozzle defined by at least a third and a fourth wall, said annular nozzle surrounding said central nozzle for ejecting an innershield gas.

Support for this amendment can be found in Applicants' specification at least at pages 5-6 and Figures 1 and 2.

Applicants respectfully traverse all pending rejections for at least the reasons discussed below.

**Rejections Under 35 U.S.C. § 112, Second Paragraph**

The Examiner rejected claims 14-22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner asserts that

the term "nozzle" is indefinite as to its meaning and contends, "As indicated previously, the term 'nozzle' appears to be used to indicate the nothingness within a structure. However, the term 'nozzle' is conventionally understood to be a physical structure - often a tube or tube-like feature. Examiner sees nothing in the present arguments which serve to point out how one of ordinary skill would be able to understand what is meant by 'nozzle' in the present claims." Office Action at 5.

Although Applicants disagree that the term "nozzle" is indefinite as used throughout Applicants' specification and clearly depicted in the Figures, in the interest of advancing prosecution in this case, Applicants have amended independent claim 14 to recite, in part, "said central nozzle being defined by at least a first and a second wall [and] an annular nozzle defined by at least a third and a fourth wall." Applicants also note that "the subject matter of the claim need not be described literally (i.e., using the same terms or in *haec verba*) in order for the disclosure to satisfy the description requirement" of 35 U.S.C. § 112, first paragraph. M.P.E.P. § 2163.02. Further, "[m]ere rephrasing of a passage does not constitute new matter. Accordingly, a rewording of a passage where the same meaning remains intact is permissible." M.P.E.P. § 2163.07. Thus, Figures 1 and 2, and the description of nozzles in Applicants' specification provides adequate support for the proposed amendment.

Thus, Applicants respectfully request the withdrawal of the rejection of claims 14-22 under 35 U.S.C. § 112, second paragraph.

#### **Rejections Under 35 U.S.C. § 102**

Applicants respectfully traverse the rejection of claims 14-22 under 35 U.S.C. § 102(b) as being anticipated by Cain. In order to properly establish that Cain

anticipates Applicants' claimed invention under 35 U.S.C. § 102, every element of the claims in issue must be found, either expressly or described under principles of inherency, in that single reference. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the... claim." See M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Cain fails to disclose every element of Applicants' claims. Amended independent claim 14 recites, in part, "said central nozzle being defined by at least a first and a second wall, said central nozzle having a concave shaped cross-section in a radial plane." Cain nowhere appears to disclose such features.

In the Office Action, the Examiner seems to assert that the "gas receiving aperture 120" of the "burner mounting block 107" described in Cain has a concave shaped cross-section in an axial plane. First, Applicants note that the burner mounting block of Cain should not be considered a "nozzle." However, even assuming, *arguendo*, that the gas receiving passage in the burner mounting block of Cain could be described as a "nozzle," that passage does not have a "concave shaped cross-section in a radial plane." As correctly stated by the Examiner in the Office Action, the gas receiving aperture of Cain has a concave shape only in an axial cross-section. Office Action at 3.

Further, no other passage or nozzle of Cain appears to have a "concave" shape, as that term is defined by Applicants, "in a radial plane." To the contrary, Cain describes a central nozzle having a circular shaped cross-section in the radial plane. This circular cross-section of the central nozzle is evident in Figures 3 and 4 of the

reference. Applicants' specification expressly defines a circle as a "convex" shape and not a "concave" shape. Applicants' specification states:

For the purpose of the present invention, with "concave" shape it is intended any planar geometrical shape that is not "convex," wherein a planar geometrical shape is "convex" if it contains all the line segments connecting any pair of its points. Thus, for example, a star is a concave shape, while a circle and a rectangle are convex shapes.

Specification at page 3, lines 7-11. Thus, Cain does not disclose "a central nozzle . . . having a concave shaped cross-section in a radial plane."

Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of amended independent claim 14 based upon Cain under § 102. Moreover, claims 15-22 depend from independent claim 14 and thus, contain all the elements and limitations thereof. As a result, dependent claims 15-22 are allowable at least due to their corresponding dependence from independent claim 14.

#### **Claim Scope**

It is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in the drawings. Rather, Applicants believe that they are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

**CONCLUSION**

In view of the foregoing, Applicants respectfully request reconsideration and reexamination of this application, and the timely allowance of the pending claims.

If the Examiner believes that a telephone conversation might advance prosecution of this application, the Examiner is cordially invited to call Applicants' undersigned attorney at (404) 653-6435.

Applicants respectfully note that the Office Action contains a number of assertions concerning the related art and the claims. Regardless of whether those assertions are addressed specifically herein, Applicants respectfully decline to automatically subscribe to them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: February 24, 2010

By: 

Benjamin D. Bailey  
Reg. No. 60,539